

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**SIDNEY V. BARKER**

**Plaintiff,**

**v.**

**CIVIL ACTION No. 2:07-0815**

**JOHN KING, D.O., ET AL.**

**Defendants.**

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, for the reasons set forth below, Defendants Teays Valley Health Services, Inc., d/b/a Putnam General Hospital; HCA Inc.; Healthtrust, Inc. – The Hospital Company; Hospital Corp., L.L.C.; David McNair; John A. King, D.O.; Wright Medical Technology, Inc. and Robert Edwards; and EBI, L.P., by their undersigned attorneys, remove this action from the Circuit Court of Putnam County of the State of West Virginia to the United States District Court for the Southern District of West Virginia, pursuant to 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9027. This Court has jurisdiction of this civil action pursuant to 28 U.S.C. § 1334.

In support of the Notice of Removal, the Defendants state as follows:

**BACKGROUND TO THE NOTICE OF REMOVAL**

1. On or about February 7, 2005 the plaintiffs in the captioned case (“Plaintiff” whether one or more) filed a Complaint in the Circuit Court of Putnam County, West Virginia, which was styled as set forth above, and which was docketed by the Circuit Court at No. 05-C-70, (the “Action”). True and current copies of the docket sheet, pleadings, and orders filed in this case are attached as Exhibit A.

2. In addition to this case, there were some 122 cases filed against Dr. King and certain other defendants in the Circuit Court of Putnam County, West Virginia. For administrative convenience, the Circuit Court of Putnam County decided to create Docket No. 05-C-5000. In this case, various orders were entered to deal with universal, global or administrative issues. Copies of these orders are being filed simultaneously herewith as attachments to Defendants' Notice of Filing of Global Orders. That document is incorporated herein by reference.

3. On November 21, 2007, while the Action was pending, Defendant John A. King, D.O. ("King") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Alabama (the "Bankruptcy Case").

4. Claims or causes of action in a civil action that are related to a pending bankruptcy case may be removed pursuant to 28 U.S.C. § 1452(a), which states in pertinent part:

A party may remove any claim or cause of action in a civil action...to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claims or causes of action under section 1334 of this title.

28 U.S.C. § 1452(a). In turn, 28 U.S.C. § 1334(b) gives district courts original jurisdiction "of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Title 11 encompasses the Bankruptcy Code.

5. The Action is related to a case currently pending under the Bankruptcy Code, *i.e.* King's Chapter 7 Bankruptcy Case in the Northern District of Alabama, because the outcome of this Action could affect the bankruptcy estate. Indeed, any of Plaintiff's claims, causes of action, or rights to relief must be pursued as claims in the Bankruptcy Case under 11 U.S.C. § 501. Plaintiff has asserted claims and causes of action against King and seeks money

damages from him. Moreover, some if not all of the removing Defendants have asserted a cross-claim against King seeking indemnity or contribution from him for any liability that may be imposed upon them as a result of the Action. Finally, the Action is not a proceeding before the United States Tax Court, and it is not a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

6. In compliance with Bankruptcy Rule 9027, the removing Defendants state that issues and proceedings likely to be considered "non-core" within the meaning of 28 U.S.C. § 157(b) predominate in this Action, *e.g.*, the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the Chapter 7 estate, which are expressly made "non-core" by statute. 28 U.S.C. § 157(b)(1)(B). However, portions of this Action may constitute "core" issues and proceedings within the meaning of 28 U.S.C. § 157(b) in that they include matters concerning the administration and distribution of assets of the Chapter 7 bankruptcy estate, including insurance policies and their proceeds.

7. In compliance with Bankruptcy Rule 9027, as to any issue ultimately determined to be non-core, the removing Defendants do not at the present time consent to the entry of final orders or judgments by the honorable bankruptcy judge presiding over the Bankruptcy Case.

8. This Notice is timely under Bankruptcy Rule 9027(a)(2), which permits a claim or cause of action pending in a civil action at the time of a bankruptcy filing to be removed "within the longest of (A) 90 days after the order for relief in the case under the Code, [or] (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code[.]" Moreover, this Notice would also be timely pursuant to 28 U.S.C. § 1446(b) (if that statute were applicable to removals under § 1452),

because it is filed within thirty days of King's filing of the Bankruptcy Case.

9. Written notice of the filing of this Notice of Removal is hereby given to the adverse party.

10. A Notice of Filing of Notice of Removal, with an attached copy of this Notice of Removal (but without the attachments hereto, all of which are already of record in the State Court proceedings) will be filed promptly with the Clerk of the Circuit Court of Putnam County, West Virginia.

11. No previous application has been made by Defendants for this or similar relief.

12. Although 28 U.S.C. § 1452 permits removal by any party acting alone, all Defendants that have been served in this action join in this removal.

WHEREFORE, Defendants, Teays Valley Health Services, Inc., d/b/a Putnam General Hospital; HCA Inc.; Healthtrust, Inc. – The Hospital Company; Hospital Corp., L.L.C.; David McNair; John A. King, D.O.; Wright Medical Technology, Inc. and Robert Edwards; and EBI, L.P., remove this Action from the Circuit Court of Putnam County to the United States District Court for the Southern District of West Virginia.

TEAYS VALLEY HEALTH SERVICES, INC.,  
d/b/a PUTNAM GENERAL HOSPITAL; HCA  
INC.; HEALTHTRUST, INC. – THE HOSPITAL  
COMPANY; HOSPITAL CORP., L.L.C.; DAVID  
MCNAIR; JOHN A. KING, D.O.; WRIGHT MEDICAL  
TECHNOLOGY, INC., and ROBERT EDWARDS; EBI,  
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**CERTIFICATE OF SERVICE**

I, Thomas Goodwin hereby certify that on December 14, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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I also hereby certify that on December 14, 2007, I have mailed a copy of the foregoing document to the following persons via United States mail postage pre-paid:

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